BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD

CENTRAL PUGET SOUND REGION

STATE OF WASHINGTON

SHORELINE PRESERVATION SOCIETY (SPS), JANET WAY, JOHN BEHRENS, AND WENDY DIPESO, Petitioners, v. CITY OF SHORELINE, Respondent.	**CASE No. 15-3-0002** ***(SPS)*** **ORDER ON MOTIONS**

This matter comes before the Board on cross-motions of the parties, seeking dispositive rulings on subject matter jurisdiction, standing, and public process. Petitioners also move to supplement the record. Petitioners Shoreline Preservation Society, Janet Way, John Behrens, and Wendy DiPeso (collectively, "Shoreline Preservation") challenge the City of Shoreline's ("City") plans for future development around Sound Transit's anticipated Link Light Rail 185th Street Station. The City has issued a Final Environmental Impact Statement (FEIS) and adopted three ordinances:

- Ordinance 702, the 185th Street Station Subarea Plan and land use map,
- Ordinance 706, development regulations and zoning to implement the subarea plan,
- Ordinance 707, a Planned Action Ordinance for the subarea.

Shoreline Preservation's petition for review challenges adoption of these ordinances as non-compliant with the State Environmental Protection Act (SEPA) and/or the Growth Management Act (GMA). The parties have filed dispositive motions.

Upon review of the briefs and exhibits filed by the parties, the Board rules:

- The City's motion to dismiss SEPA issues is denied.
- The City's motion to dismiss challenges to the Planned Action Ordinance is

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

granted.

- Shoreline Preservation's motion for a ruling of non-compliance with public notice requirements for the Planned Action Ordinance is denied.
- The City's dispositive motion on public process is granted as to compliance with the public notice requirements of GMA and SEPA. The Board defers consideration of the remaining public participation issues to the hearing on the merits.
- Shoreline Preservation's motion to supplement the record is granted as to the 1998 Comprehensive Plan Final Environmental Impact Statement, Surface Water Drainage section only,[1] and the Thornton Creek Watershed Plan.

A mark-up of the legal issues indicating issues remaining for briefing and hearing on the merits is attached to this order as Attachment A.

BACKGROUND AND STANDARD OF REVIEW

Sound Transit intends to extend light rail north from Seattle through the City of Shoreline and has designated a station location along the Interstate 5 alignment at NE 185th Street. The City in 2012 embarked on a planning process for the area around the station, anticipating opportunity for more intense development when the light rail extension is operable in 2023. The resulting comprehensive plan and land use map amendments, adopted in Ordinance 702, designate a 293-acre 185th Street Station Subarea. Now primarily developed as low-rise single family, churches, and schools, the new subarea is upzoned for mixed uses at three height levels – 35 feet, 45 feet, and 70 feet. Ordinance 706 adopts zoning and development standards for the subarea. Ordinance 707 is a Planned Action Ordinance, allowing streamlined SEPA review of development projects in the new subarea.

Under the GMA, amendments to comprehensive plans and development regulations enacted by local government are presumed valid upon adoption. RCW 36.70A.320(1). The burden is on the petitioners to demonstrate that the City's action is not in compliance with

[1] Index No. 23, pages FEIS 2-17 to 2-19 and 2-49.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

the GMA. RCW 36.70A.320(2). The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations. RCW 36.70A.280, RCW 36.70A.302. The Board shall find compliance unless it determines that the City's action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been committed."[2]

In this order, the Board decides limited preliminary motions brought by the parties. The Board's motions calendar allows dispositive motions on a limited record "to determine the board's jurisdiction [or] the standing of a petitioner." WAC 242-03-555(1). Compliance with statutory requirements for notice and public participation may also be decided on dispositive motion "provided that the evidence relevant to the challenge is limited." WAC 242-03-560. Motions to supplement the record are generally decided on the same calendar. WAC 242-03-565(1). The Board may defer consideration of a dispositive motion to the hearing on the merits in order to allow opportunity for oral argument and determination on a more complete record. WAC 242-03-555(3); WAC 242-03-560.

In deciding these motions, the Board had the benefit of thorough briefing[3] by the parties and voluminous exhibits from the record.[4]

PLANNED ACTION ORDINANCE

The parties have filed cross-motions for determination of the Board's jurisdiction to review Ordinance 707, the Planned Action Ordinance for the 185th Street Station Subarea.

---

[2] *City of Arlington v. CPSGMHB,* 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County,* 121 Wn.2d 179, 201, 849 P.2d 646 1993); *See also*, *Swinomish Tribe v. WWGMHB,* 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB,* 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

[3] Petitioners' Dispositive Motions, August 6, 2015; City of Shoreline's Response to Petitioners' Dispositive Motion, August 20, 2015; Petitioners' Reply to City's Response to Petitioners' Dispositive Motions, August 27, 2017; City of Shoreline's Motion to Dismiss, August 6, 2015; Petitioners' Response to City's Dispositive Motions, August 20, 2015; City of Shoreline's Reply to Petitioners' Response to City's Motion to Dismiss, August 27, 2017; [Petitioners'] Motion to Supplement the Record, August 6, 2015; City of Shoreline's Response to Petitioners' Motion to Supplement, August 20, 2015; Petitioners' Reply Brief re Motion to Supplement the Record, August 27, 2015.

[4] The City with its motion submitted five volumes of documents from its FEIS and ordinance adoption process.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

The City asserts the Planned Action Ordinance is a SEPA action and not an ordinance amending development regulations. Shoreline Preservation contends the Planned Action Ordinance amends the subarea development regulations through three provisions that essentially vitiate the regulations. Shoreline Preservation acknowledges that Board jurisdiction hinges on whether the challenged provisions of Ordinance 707 constitute amendments to Ordinance 706.[5] Upon analysis, the Board finds the planned action provisions do not constitute amendments to the subarea regulations which would vest jurisdiction with the Board.

To put the question in context, the Board's jurisdiction is statutorily limited to comprehensive plans and development regulations and to RCW 43.21C, SEPA, only "as it relates to plans, development regulations, or amendments, adopted under [GMA] or [SMA]." RCW 36.70A.280(1). "Planned action" is a SEPA mechanism provided by RCW 43.21C.440 and its implementing regulations, WAC 197-11-164, -168. The planned action is a procedural device allowing streamlined environmental review of a project or projects within the parameters of a previous environmental impact statement (EIS).[6] A planned action is "a type of project action" within an urban growth area that has had "significant environmental impacts adequately addressed" in an EIS prepared in conjunction with amendment of a comprehensive plan or development regulations, for example, for a subarea plan. WAC 197-11-164.

In *Davidson Serles & Assoc. v. City of Kirkland,* 159 Wn. App. 616, 632, 246 P.3d 822 (2011), the court explained:

> A planned action ordinance enumerates particular "planned actions" that will be allowed to proceed without a threshold determination or an EIS. SEPA authorizes such an approach because the planned action ordinance . . .

---

[5] Petition for Review Legal Issue 7: Board has Jurisdiction over Development Regulations. Did Ordinance 707, the Planned Action Ordinance, amend City development regulations by adopting different standards for development than the standards adopted in Ordinance 706, thereby authorizing Board review under RCW 36.70A.280(1) (because Ordinance 707 amends development regulations)?

[6] Common SEPA acronyms used by the parties and Board in this case include EIS for Environmental Impact Statement, DEIS for Draft Environmental Impact Statement, and FEIS for Final Environmental Impact Statement. A DNS is a Declaration of Non-Significance. An SEIS is a Supplemental Environmental Impact Statement, and a supplement may be either a SDEIS or SFEIS.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

> merely simplifies and expedites the land use permit process by relying on the local government's preexisting land use plan policies and development regulations.[7]

The "pre-existing land use policies and development regulations" in the present case were enacted in Ordinance 702, the Station Subarea plan, and Ordinance 706, the Station Subarea zoning and development regulations. The City asserts its planned action ordinance, Ordinance 707, "merely reflects the vision in the 185th Street Station Subarea (a component of Shoreline's comprehensive plan) and utilizes the existing SMC Title 20 (Shoreline's development regulations) to implement that vision." City Motion to Dismiss, at 32.

The Board has twice dismissed challenges to planned action ordinances based on its lack of subject matter jurisdiction. In *Kent CARES v. City of Kent,* GMHB Case No. 02-3-0015, Order on Motions (Nov. 27, 2002), the Board expressly held that it did not have jurisdiction over a Planned Action Ordinance because the ordinance did not adopt nor amend a subarea plan.[8] In *Kent CARES,* the City of Kent had previously adopted a subarea plan for the downtown area as a component of Kent's comprehensive plan. The Board stated that the planned action was not itself a subarea plan; rather, it implemented existing land use policies and regulations to perform that function. *Id.*at 6. *Kent CARES* was followed in *2101 Mildred LLC v. City of University Place,* GMHB Case No. 06-3-0022, Order of Dismissal (Aug. 17, 2006), where the Board dismissed the challenge to a planned action ordinance as not an amendment to a development regulation and therefore outside of the Board's jurisdiction.

---

[7] *Davidson Serles,* 159 Wn. App. at 631, n. 7 (2011): "The parties do not dispute that the Board lacks jurisdiction to review challenges to a planned action ordinance. [Citing *Mildred LLC*, and *Kent CARES].*"

[8] In *Kent CARES*, the Board explained that planned actions are not development regulations and not subject to the Board's jurisdiction because

> [P]lanned action ordinances are more akin to project actions . . . Designating specific types of projects as planned action projects shifts the environmental review of a project from the time a permit application is made to an earlier phase in the planning process. The intent is to provide a more streamlined environmental review process at the project stage by conducting more detailed environmental analysis during planning.

Kent CARES, GMHB No. 02-3-0015, 4-5 (Order on Motions, Nov. 27, 2002) citing Wash. Dep't of Ecology, *SEPA Handbook*, §7.4 (1998).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Shoreline Preservation asserts the Planned Action Ordinance for the 185th Street Subarea must be treated differently because it amends the development regulations adopted in Ordinance 706 rather than merely implementing them. As characterized by Shoreline Preservation, the Planned Action Ordinance allows:

- At Section 3(C)(2)(b), **changes in density standards**, granting discretion to City administrators to modify density and/or height standards set forth in Ord. No. 706 within any zone, subject only to the overall density limit of the entire subarea as a whole;
- At Section 3(C)(2)(d), **changes in transportation impact mitigation standards**, allowing City administrators to reapportion proportional share of mitigation that would otherwise accrue to any particular project under SMC Ch. 20.60; and
- At Attachment A, Exhibit A (Mitigation at 3rd paragraph), **changes in mitigation standards** that would otherwise apply, by allowing City administrators to accept "alternative mitigation" at their complete discretion, without any limitations or standards for determining the sufficiency of the mitigation, except that it is "equivalent."[9]

The first of these allegations requires the most detailed analysis. The Planned Action Ordinance addresses development thresholds at Section 3(C)(2). Subsection (2)(a) Table 1 lays out the **land use growth projections** for population, housing and jobs within the 20-year planning period and Table 2 lays out **maximum building heights** in the three, mixed-use residential zones.

> Section 3(C)(2) Development Thresholds:
>
> **(a) Land Use:** The following thresholds of new land use growth projections and building heights are contemplated within the Planned Action Area and reviewed in the FEIS for the subsequent 20 year planning period are as follows:

[9] Petitioner's Dispositive Motions, p. 4

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Table 1 – **Land Use Growth Projections** within the Planned Action Area

Preferred Alternative (2035)	
	Threshold Growth
Population	5,399
Residential Units	2,190
Jobs	928
Total New Activity Units – Residential Units and Jobs	3,128

Table 2 – **Maximum Building Height**

Zoning District	**Maximum Building Height**
Mixed-Use Residential 35' (MUR 35')	35 feet
Mixed-Use Residential 45' (MUR 45')	45 feet
Mixed-Use Residential 70' (MUR 70')	70 feet
Mixed-Use Residential 70' (MUR 70') w/ development agreement	140 feet

Then Subsection 2(b) provides:

> **Shifting development amounts between land uses identified in Subsection 3(C)(2)(a) may be permitted** when the total build-out is less than the aggregate amount of development reviewed in the Planned Action EIS; the traffic trips for the preferred alternative are not exceeded; and, the development impacts in the Planned Action EIS are mitigated consistent with this Ordinance. (emphasis added)

Focusing on Table 2, Shoreline Preservation interprets "shifting development amounts" to mean modification of the building heights and intensity of development may be allowed anywhere in the subarea at the discretion of City administrators, with no right of appeal to the Board and no additional SEPA review. Since the projected build-out of the

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

subarea over 80-100 years is equal to the entire present population of the City of Shoreline, the aggregate amount of development reviewed in the EIS "is no limit at all in the near term." Petitioners' Motion at 8. With this interpretation, "shifting development amounts" effectively nullifies the careful block-by-block zoning designations and phased implementation of existing Ordinance 706. Shoreline Preservation argues, on this interpretation, height and density thresholds are meaningless because they can be administratively "shifted" any time before the 100-year build-out, thereby significantly revising the regulations in Ordinance 706.

In contrast, the City explains that "shifting development amounts **between land uses**" does not refer to building height zones. It refers to Table 1 – Land Use Growth Projections, not Table 2 – Maximum Building Height. Table 1 projects a 20-year growth of 2190 residential units and 928 jobs for a total of 3128 "new activity units." The "land uses" addressed in Section 3(C)(2)(a) are residential and non-residential uses, not zoning districts. The reference to land uses in Section 3(C)(2)(b) corresponds with the "activity units" in Table 1 and the "aggregate amount of development" refers to the total of these uses – 3128 units, according to the City.

The City's explanation is consistent with the "form-based" zoning adopted for the subarea.[10] Most American urban zoning is "Euclidean zoning" that seeks to segregate incompatible land uses – single family homes from apartments, residential from commercial and industrial. In contrast, the theory behind "form-based" zoning is that sustainable communities require a dynamic mix of housing types, neighborhood-serving retail and services, offices, and institutions within a built envelope that establishes compatible size and densities.[11] Thus the City planning administrator would have discretion to adjust the balance of uses between homes and other development, so long as the aggregate is not exceeded.

The City's explanation of the challenged language is reasonable, if not self-evident. Ordinance 707 explicitly addresses projects "reviewed in the FEIS for the subsequent 20

[10] Index 1(Mm), Staff Report for Planning Commission Meeting, September 4, 2014, p. 2.
[11] *See*, www.formbasedcodes.org/definition: "A form-based code is a land development regulation that fosters predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code."

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

year planning period," not for the 100-year build-out.[12] Within each of the zoning districts, "mixed-use residential" development is allowed to a certain height. Administrative "shifting" of the proportion developed as housing and the proportion developed for commercial uses "may be permitted" in the next 20 years so long as the aggregate does not exceed the 3128 units in the 20-year growth projection, the traffic trips for the preferred alternative are not exceeded, and the development impacts are mitigated as required. **The Board finds** that Section (3)(C)(2)(b) of Ordinance 707 provides administrative flexibility for adjusting the balance between residential and non-residential development in a 20-year period. **The Board finds** the provision does not amend the development regulations of Ordinance 706.

Shoreline Preservation's second allegation is that administrative discretion to adjust allocation of transportation mitigation between projects is an amendment of the standards in the existing development regulations. They point to Ordinance 707, Section 3(C)(3)(d)(iii) which provides:

> The responsible City official shall have the discretion to adjust the allocation of responsibility for required [transportation] improvements between individual Planned Action Projects based upon their identified impacts.

The Board reads this provision in context and finds no conflict with City development regulations. Subsection (3)(d)(i) begins: "The responsible City official shall have discretion to determine incremental and total trip generation [based on standard measures]." Subsection (3)(d)(ii) gives the official the discretion to condition project applications to comply with the PAO and the Shoreline Municipal Code. Subsection (3)(d)(iii) allows allocation of mitigation responsibility between projects "**based upon their identified impacts**."

The Board finds that Section (3)(C)(3)(d)(iii) of Ordinance 707 provides administrative discretion to appropriately assign responsibility for transportation improvements to those projects whose impacts they address. **The Board finds** the planning director's discretion is based on measurable standards and is thoroughly consistent with and implements the City's regulations. **The Board finds** the provision does not amend the development regulations of Ordinance 706.

[12] Index No. 19, Ordinance 707, Section (2)(a), p. 5.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Shoreline Preservation's third argument is that the discretion to consider alternative mitigation measures for a project constitutes an amendment of development regulations. They point to the following language in Exhibit A to the Planned Action Ordinance under the heading "Mitigation Measures":

> Any applicant for a project within the Planned Action area may propose alternative mitigation measures, if appropriate and/or as a result of changed conditions, in order to allow equivalent substitute mitigation for identified impacts. Such modifications would be evaluated by the City SEPA Official prior to any project approvals by the City.

Index No. 19, Ex. A, at 2.

Shoreline Preservation points out that many of the mitigation measures listed in Attachment A are simply compliance with City code requirements; they posit that the discretion for the building official to consider alternative mitigation measures "is yet another backdoor amendment to development regulations, designed to provide the City with virtually unlimited discretion in changing development standards to accommodate developers." Petitioner's Dispositive Motions, at 14.

The Planned Action Ordinance does not allow undue administrative discretion in the Board's view. Rather, the challenged provision allows "equivalent substitute mitigation for identified impacts." "Equivalent" means "equal, virtually identical."[13] Equivalent mitigation, therefore, must be measurably equal in its amelioration of identified impacts to the analogous measure listed in Attachment A.

The Board's standard for determining a complaint of undue administrative discretion is well-articulated in *Pilchuck Audubon Society v. Snohomish County*, GMHB Case No. 95-3-0047, Final Decision and Order, (December 6, 1995) at 36, where the Board approved "development regulations that provide administrators with clear and detailed criteria so that in wielding professional judgment, the Director has regulatory 'sideboards' and policy

[13] *Merriam- Webster Dictionary*, 1998 Home and Office Edition; *See also Roget's II, The New Thesaurus,* Third Edition, 1995: "Equivalent: 1. Agreeing exactly in value, quantity, or effect."

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

direction."[14] In the Planned Action Ordinance, clear regulatory sideboards for approval of substitute mitigation measures are provided by the requirement of "equivalent mitigation for identified impacts."

The Board finds the alternative mitigation provision in Attachment A to the Planned Action Ordinance provides a clear standard to guide administrative discretion. **The Board finds** the provision does not amend the development regulations of Ordinance 706.

In sum, Shoreline Preservation's arguments are unpersuasive. The Planned Action Ordinance does not amend the adopted development regulations. **The Board concludes** there is thus no basis for Board review jurisdiction under the GMA. **Legal Issue 7 is dismissed.**[15] Challenges to Ordinance 707 in other legal issues are **dismissed.**

Two other allegations concerning the Planned Action Ordinance remain to be resolved – defective notice and violation of SEPA planned action rules.

Notice of the Planned Action Ordinance. Shoreline Preservation's dispositive motion requested a ruling that public notice of adoption of Ordinance 707 was fatally defective. Petitioners' Dispositive Motions, 15-19. The argument relied in large part on the notice requirements of the Optional Municipal Code, Chapter 35A.63 RCW, at RCW 35A.63.100. This Board does not have jurisdiction to determine compliance with the Optional Municipal Code.[16] Even if the Board had jurisdiction over the Planned Action Ordinance, the defective notice challenge as to Ordinance 707 must fail for the reasons enumerated below in the Public Notice section of this order.

---

[14] *See also*, *Preserve Responsible Shoreline Management v. City of Bainbridge Island*, GMHB Case No. 14-3-0012, Final Decision and Order (April 6, 2015), p. 106, (authorizing administrative exceptions to native plant landscaping requirement for non-natives serving the *same ecological functions,* where plant lists sorting non-native and native plants by ecological function are readily available.)

[15] Almost all of the legal issues listed in the Board's prehearing order reference Ordinance 707. Legal Issues No. 7, 8, 9, and 12 specifically challenge Ordinance 707's compliance with both the GMA and SEPA. Attachment A to this order is a mark-up of the legal issues remaining for decision, with references to Ordinance 707 stricken. Any legal issue or portion thereof which is based on the contention that Ordinance 707 is an amended development regulation should also be stricken.

[16] *See, e.g*. *Tupper v. City of Edmonds*, GMHB Case No. 03-3-0018, Order on Motions (Dec 3, 2003) (RCW 35A.63 is beyond Board jurisdiction); *Snohomish County Farm Bureau v. Snohomish County*, GMHB Case No.12-3-0008, Final Decision and Order (March 14, 2013)(The regulatory requirements of RCW 35.63 and RCW 35A.63 do not apply to a county planning under the GMA).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

SEPA Non-Compliance. Shoreline Preservation Legal Issue 8[17] questions whether Ordinance 707 violates RCW 43.21C.440 and WAC 197-11-164, 168, and 172 – the authorization and procedural provisions related to a planned action.

Ordinance 707 was adopted pursuant to authority granted to the City by RCW 43.21C.440 and its implementing regulations WAC 197-11-164 to -168. The Board's SEPA review authority is narrow. RCW 36.70A.280 grants review authority only for a petition alleging non-compliance with RCW 43.21C "**as it relates to plans, development regulations, or amendments**."[18] As explained above, Ordinance 707 is not a comprehensive plan or a development regulation; therefore, **the Board concludes**, the Board's SEPA review authority does not apply to the question of whether adoption of Ordinance 707 met SEPA procedural requirements. **Legal Issues 8 is dismissed.**

Legal Issue 12 posits that all three of the ordinances violate SEPA because the FEIS fails to support Ordinance 707.[19] Legal Issues 10, 11, 13-17 set forth various SEPA allegations, including Ordinance 707 in most of these issues. All of these issues are focused on claims that the 185th Street Station Subarea FEIS is inadequate. Again, the Board notes a planned action ordinance does not require an EIS. The court made it clear in *Davidson Serles,* 159 Wn. App. 616 (2011) that such a claim cannot stand. The court held:

> [N]o EIS was required for the City to enact the planned action ordinance. Thus, **an inadequate EIS could not form the basis of a claim against the planned action ordinance,** and dismissal [of the claim] was appropriate.

Davidson Serles, at 631-632 (emphasis added). The court reasoned that the environmental impacts of individual planned action projects have been addressed in an EIS

---

[17] Petition for Review Legal Issue 8. Planned Action Ordinance Violates GMA and SEPA. Does the adoption of Ordinance 707 violate RCW 36.70A.020(6), .020(7), and .020(10), RCW 36.70A.040, and the planned action statutes and regulations, including but not limited to RCW 43.21C.440 and WAC 197-11-164, 197-11-168, and 197-11-172?

[18] *See Spokane County v. EWGMHB,* 176 Wn. App. 555, 569-570, 309 P.3d 673 (2013) and *Davidson Serles,* 159 Wn. App. 616, 628 (2011) (both cases holding that the Board may review petitions alleging non-compliance with SEPA in adopting or amending comprehensive plans or development regulations).

[19] Petition for Review Legal Issue 12. FEIS does not Support Planned Action Ordinance. Does the adoption of Ordinances 702, 706, and 707 violate the requirements of GMA and the procedural and substantive requirements of SEPA, because the FEIS incorporated by reference in Ordinance 707 fails to meet, among others, the requirements of RCW 43.21C.440, WAC 197-11-164, 197-11-168, and 197-11-172?

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

prepared in conjunction with one of the activities listed in RCW 43.21C.031, a list which includes a subarea plan. *Id.* at 636. The court stated that "because the potential environmental impacts will have already been analyzed, it would be unnecessarily duplicative to require an additional EIS in order to enact a planned action ordinance." *Id*. The court concluded:

> [T]he adoption of a planned action ordinance itself is not a major action significantly affecting the environment. Thus, enacting the planned action ordinance is not an action for which an EIS is required. Thus, Davidson's claim that the planned action ordinance herein is based on an inadequate EIS is without merit.

Id. at 637.

Even if the Board had jurisdiction over Ordinance 707, the *Davidson Serles* holding bars all of Shoreline Preservation's claims asserting that the ordinance should be held non-compliant and invalid because of an inadequate FEIS. **The Board concludes** that Petitioners' claim that Ordinance 707 is based on an inadequate EIS is beyond the Board's jurisdiction. **Legal Issue 12 is dismissed.**

Having concluded it has no basis for review authority over the Planned Action Ordinance, the Board **dismisses Legal Issues 7, 8, and 12 and dismisses all allegations concerning Ordinance 707** from the remaining legal issues in the petition for review.[20]

SEPA STANDING

The Board now turns to the question whether Shoreline Preservation exhausted administrative remedies and has standing to challenge the adequacy of the FEIS with respect to the 185th Street Station Subarea Plan and its development regulations. The City moves to dismiss Shoreline Preservation's SEPA issues (Legal Issues 10-17) based on the petitioners' failure to exhaust administrative remedies. A petitioner who has not used available opportunities to raise objection to environmental documents during the EIS

[20] Any legal issue or portion thereof which is based on the contention that Ordinance 707 is an amended development regulation is also dismissed.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

comment period waives the right to bring a subsequent challenge.[21] Shoreline Preservation did not comment during the DEIS comment period but did so during an extended post-FEIS comment period. On the unique facts of this case, as set forth below, the Board finds petitioners exhausted administrative remedies and have standing to appeal SEPA issues.

WAC 197-11-545(2) provides:

> **Lack of comment** by members of the public on environmental documents, within the time periods specified by these rules, **shall be construed as lack of objection** to the environmental analysis if the requirements of WAC 197-11-510 are met. (Emphasis added)

The "requirements of WAC 197-11-510" are the use of "reasonable notice methods to inform the public" that an environmental document is available and "that public hearing(s), if any, will be held." WAC 197-11-510(2) specifies default notice methods: (a) posting the property, for site-specific proposals, and (b) publishing notice in a newspaper of general circulation. The Board's inquiry thus includes whether the petitioners had notice and whether they provided timely comment.[22]

The DEIS, issued June 9, 2014, was made available for public comment with a published notice in the *Seattle Times,* direct email notice to almost 1000 people, announcement in the City's newsletter *Currents* (Index No. 21(D)), and notice of availability to interested organizations (Index No. 14, ch. 5, Distribution List). Petitioner Janet Way, as representative for the Parkwood Neighborhood Association, received direct notice. Index No. 20(A)(A6). Petitioner John Behrens is shown on the postal mailing notice list. Index No. 20(A)(A4). A public hearing on the DEIS was conducted by the planning commission July

---

[21] *See, e.g., Shoreline III and IV v. Snohomish County*, GMHB Coordinated Case Nos. 09-3-0013c and 10-3-0011c, Order on Dispositive Motions (January 18, 2010), at 6: "One of SEPA's purposes is to ensure complete disclosure of the environmental consequences of a proposed action before a decision is taken. Participation and objection to the environmental analysis is therefore a prerequisite to review of agency SEPA compliance."

[22] The Board has excluded petitioners who failed to comment (*Lowen Family Partnership v. City of Seattle*, GMHB Case No. 13-3-0007, Order of Dismissal (September 30, 2013), at 7) or who commented outside the DEIS comment period (*Your Snoqualmie Valley v. City of Snoqualmie*, GMHB Case No. 11-3-0012, Final Decision and Order (May 8, 2012), at 13-17, (denying standing to organization that submitted a comment letter prior to the issue date of the DNS but failed to comment during the DNS comment period)).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

10, 2014. Petitioners did not testify at this hearing or submit any written comments during the DEIS comment period.[23]

However, after the close of the DEIS comment period, the planning commission and city council developed a new preferred alternative – Alternative 4. Alternative 4 extended the subarea boundaries. Alternative 4 also assumed a different balance between residential and non-residential development than Alternative 3, the DEIS "most growth" alternative.[24] The FEIS acknowledged that Alternative 4 was beyond the scope of the previous analysis – that it "proposed a greater level of change in population, density, and urban form than the two previous action alternatives analyzed in the DEIS." FEIS at 1-1 and 1-4. City's Motion to Dismiss, pp. 20-21.

The FEIS analyzed the environmental impacts of the new preferred Alternative 4 and, in apparent recognition of the need for public comment, the FEIS itself announced an extended opportunity for post-FEIS written comments and a public hearing on the FEIS:

> The City of Shoreline will accept written comments on or before the public hearing on **January 15, 2015.** The public hearing will be held on the full Subarea Plan package (including the FEIS) by the Planning Commission.

FEIS at FS-6.

> **This FEIS, the Subarea Plan, and the Planned Action Ordinance will all be the subject of a public hearing before the Planning Commission . . . January 15, 2015.**

FEIS p. 1-14 (emphasis in original)

All of the Petitioners submitted written and oral testimony prior to or at the January 15, 2015 public hearing before the Planning Commission. Even before issuance of the FEIS on November 26, 2014, several of the petitioners provided comments on the FEIS Review

---

[23] On June 3, 2014, just **prior** to the June 9 issuance of the DEIS, the City held a community meeting, announced in a postcard mailer sent to over 1800 households and emailed to over 900 individuals. Index No. 20(A)(A4). Petitioner John Behrens attended and provided comments about poor drainage and the high water table of areas proposed for high density development. Index I (Hh) Transcript Petitioner's Response p. 14.

[24] The Board notes that specific notice of the August 2014 Council meetings at which the Alternative 4 proposal was discussed was mailed to residents within the impacted area who had not previously received direct notice. The August 2014 postcard expressly stated that the reason the household was receiving the postcard was because "your property falls in one of these areas" with a map link. Index No. 20(B)(B4).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Guide.[25] Janet Way, speaking on behalf of Shoreline Preservation testified at the December 4, 2014 planning commission meeting. Index 1 (Ss, Minutes, p. 4). Each of the individual petitioners provided more written comment prior to the January 15, 2015 public hearing, and each attended and testified before the planning commission at that hearing.[26]

On these facts, the City urges us to deny SEPA standing to petitioners who failed to comment on environmental documents "within the time period specified by these rules," i.e., within the DEIS comment window – June 9 to July 10, 2014. City Motion to Dismiss at 24-29. Shoreline Preservation objects, saying the City failed to follow the steps required under SEPA when a proposal has been substantially changed after issuance of the DEIS. Petitioners' Response to City's Dispositive Motions at 12-13. They point out the appropriate action for the agency is to issue a draft supplemental EIS (DSEIS) and provide an additional comment period. *See* WAC 197-11-405(5) and SEPA Handbook at 3.6.[27] "Because Preferred Alternative 4 went beyond the range of alternatives discussed in the DEIS," they argue, "the SEPA public participation process failed to facilitate the necessary public participation process for this new and intense re-designation and rezone. . . . The City should have put the brakes on the process at that point, and produced a DSEIS to allow a public conversation about the impacts of this new alternative." Petitioners' Response at 13. "The City attempted to put a Band-Aid over this error by allowing public comment on the FEIS, something that is not ordinarily done. *See* Index No. 15 (Ex. 5 to PFR (FEIS)) at FS-6;

---

[25] Janet Way, for Shoreline Preservation Society, comment at Nov. 20, 2014 Planning Commission meeting, Index 1 (Rr) Minutes at 5-6; Janet Way, written comment, Nov. 23, 2014, Index 3 T; Jim and Wendy DiPeso, written comment, Nov.29, 2014, Index 3 T.

[26] John Behrens, Janet Way, Jim and Wendy DiPeso written comments received prior to Jan. 13, 2015, Index 3 T; January 15, 2015 planning commission public hearing, testimony from Janet Way for Shoreline Preservation, Minutes at 9-10, Wendy DiPeso, at 5-6, John Behrens, at 8, Brian Derdowski, for Shoreline Preservation, at 13-14. Index 1 (Uu).

[27] SEPA Online Handbook - 3.6 *Supplementing an EIS:*

> A supplemental EIS [WAC 197-11-620] adds information and analysis to supplement the information in a previous EIS. It may address new alternatives, new areas of likely significant adverse impact, or add additional analysis to areas not adequately addressed in the original document. . . .
>
> A supplemental EIS includes a draft (with comment period) and a final document, which essentially follows the same requirements as a draft EIS and final EIS. Scoping for a supplemental EIS [WAC 197-11-400 to 600] is optional.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

compare with WAC 197-11-460 (no requirement for public comment after FEIS is issued)." Petitioners' Response, at 12.

In the present case, the City should appropriately have prepared a draft supplemental EIS analyzing the new, more intense Alternative 4 and then circulated it for comment before issuing its FEIS. [28] Instead, the City completed an FEIS that reviewed the environmental impacts of Alternative 4, specifically and in detail, and then invited public comment before finalizing and adopting the subarea plan. These petitioners and many others commented on the FEIS and the proposal by written testimony and in the public meetings following FEIS issuance.[29] The City Council adopted a number of changes to Alternative 4 in response to comments.[30] Shoreline Preservation argues that its good faith response to the City's invitation for post-FEIS comment on Alternative 4 should suffice for exhaustion of administrative remedies. The Board agrees.

Shoreline Preservation had **no administrative remedy** for its objections to SEPA analysis of Alternative 4 during the DEIS comment period, as the alternative had not yet been created. The FEIS reviewed a preferred alternative admittedly beyond the scope of the alternatives reviewed in the DEIS, and the City itself extended the SEPA comment period for post-FEIS public comment. On these unique facts, **the Board finds** Shoreline Preservation properly availed itself of administrative remedies by providing post-FEIS written comments and testifying at the January 15, 2015 public hearing. **The Board concludes** Shoreline Preservation has standing to raise SEPA claims. The City's motion to dismiss SEPA challenges for failure to exhaust administrative remedies is **denied.**

---

[28] WAC 197-11-405(4): "A supplemental EIS (SEIS) shall be prepared as an addition to either a draft or final statement if: (a) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts. . . ." The Federal rule under NEPA is the same. See, *Wyoming v. USDA*, 661 F.3d 1209, 1259-1260 (10th Cir. Wyo. 2011) (applying the analogous NEPA provisions).

[29] Public testimony was taken at planning commission meetings December 4, 2014, and January 15, 2015, and city council meetings February 9, February 23, and March 16, 2015. An hour and a half of public comment was allowed at the February 23 council meeting. Petitioners spoke up at each of these meetings.

[30] For example, at the February 23 meeting, the city council voted to reduce the MUR 85' zone to MUR 70'. The council also voted to require monitoring of progress on mitigation, including transportation, parks, utilities, and other public services, in implementation of phased zoning. Index 1(Yy)(1)(B), Minutes, pp. 14-15.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Nevertheless, Shoreline Preservation's call for preparation of a draft supplemental EIS must be addressed and resolved.[31] In the Board's view, remanding the FEIS to the City to prepare a SDEIS on Alternative 4 and circulate it for comment would be unduly duplicative. Analysis of Alternative 4 environmental impacts has already been completed in the FEIS and public comment has been taken. In the interest of judicial economy, the Board will not remand the FEIS for correction of the procedural error.

The Board looks to a previous Thornton Creek case where the Court of Appeals declined to remand notwithstanding SEPA procedural defects. In *Thornton Creek Legal Defense Fund v. Seattle*, 113 Wn. App. 34, 54-57, 52 P.3d 522 (2002), Thornton Creek preservationists alleged a number of SEPA procedural violations in the City of Seattle's consideration and adoption of a general development plan (GDP) for construction above a drainage pipe containing waters of Thornton Creek. Upon review of the SEPA process undertaken by the city, the appellate court affirmed the trial court's ruling that the city's procedural errors were harmless, stating, "[the city] did not take final action without releasing notice of the proposed action to the public. Rather, substantial evidence in the record suggests that the public ***received adequate notice*** of, and was ***afforded ample opportunity to be heard*** on, the environmental issues raised by the GDP." (Emphasis added). The court explained: "We 'review procedural errors during the EIS process under the rule of reason and where such errors are of no consequence, they must be dismissed.'"[32]

In the case before us, the City cured its procedural error by (1) analyzing Alternative 4 in the FEIS and (2) allowing post-FEIS comment. Under the rule of reason, **the Board concludes** the procedural defect was harmless.

In sum, **the Board finds** Petitioners have participation standing to bring a SEPA challenge. Shoreline Preservation may brief and argue allegations of failure to comply with SEPA. As previously ruled, the Board's jurisdiction to hear SEPA challenges is limited to

---

[31] Petitioners' Response to City's Dispositive Motions, pp. 12-13.
[32] Citing *Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. Department of Transportation*, 90 Wn. App. 225, 233. 951 P.2d 812 (1998).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Ordinances 702 and 706 and limited to the subjects of petitioners' oral and written comments.

PUBLIC PARTICIPATION PROCESS

The City moves for a dispositive ruling that its public participation process complied with the requirements of GMA and SEPA. The Board's rules provide, at WAC 242-03-560:

> Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, **provided that the evidence relevant to the challenge is limited.** (emphasis added)

Shoreline Preservation objects: "The City has barraged the Board and Petitioners with reams of exhibits apparently in an effort to show that the public participation process was beyond reproach and that all claims should be dismissed. However, there are many gaping holes in this process that fail to meet the Board's legal standard, even if other aspects of it were laudable. . . . The City's motion is an untargeted, generic defense of the public participation challenges in the PFR. This overly broad and generalized motion should be denied under WAC 242-03-560 due to the sheer volume of exhibits alone; the City presented well over a thousand pages of exhibits for the Board and Petitioners to sort out and examine in order to rule substantively and respond." Petitioners' Response to Motion, p. 2.

Shoreline Preservation's public participation challenges are contained in Legal Issue 2(a) for GMA requirements[33] and Legal Issue 16(a) for SEPA requirements.[34] As to the GMA requirements cited in Legal Issue 2(a), the Board notes the City's failure to adopt the

[33] Legal Issue 2. Lack of Public Participation.
(a) Does the adoption of Ordinances 702, 706 and 707 violate the requirements of RCW 36.70A.020(11), .035, .130(2) (a), .140; and goals and policies of the Shoreline GMA Comprehensive Plan, including but not limited to FG 11, LU 28, LU 29, and LU 30 because the City did not provide for early and continuous public participation?

[34] Legal Issue 16. Failure to Provide Adequate Opportunity for Public Review and Comment [under SEPA]
(a) Did the City's process for issuance of the Draft EIS and adoption of the Final EIS violate SEPA's requirements for public participation? RCW 43.21C.550, .560; WAC 197-11 Part Five; WAC 197-11-904(3).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

public participation process required by RCW 36.70A.140 and RCW 36.70A.130(2)(a)[35] compounds the difficulty of the Board's review of the voluminous record to render a decision. Additional focused briefing and argument will be allowed on the merits.

As to the SEPA requirements cited in Legal Issue 16(a), the City has moved to dismiss the issue on the grounds it cites violations of RCW 43.21C.550 and RCW 43.21C.560, "provisions which do not exist," and WAC 197-11-904(3), a provision "inapplicable to this appeal." City Motion to Dismiss, at 22. Shoreline Preservation responds that these are merely typographical errors (Petitioners' Response at 16) and requests the Board to allow amendment so that Legal Issue 16(a) reads:

> Did the City's process for issuance of the Draft EIS and adoption of the Final EIS violate SEPA's requirements for public participation? WAC 197-11-550; WAC 197-11-560; WAC 197-11 Part Five; WAC 197-11-405(4).

The Board finds there will be no prejudice to the City in allowing the correction. On the facts before us, the Board has ruled above that requiring the City to reanalyze Alternative 4 as an SDEIS and provide more comment per WAC 197-11-405(4) would be unnecessarily duplicative. Violation of that WAC 197-11-405(4) provision is **dismissed**.[36] This may also resolve the alleged non-compliance with WAC 197-11-550 and -560.[37] **The Board grants** Shoreline Preservation's request to amend Legal Issue 16(a).

WAC 242-03-560 permits the Board to defer consideration of a dispositive motion on public participation to the hearing on the merits, in order to allow opportunity for oral argument and determination on a more complete record. **The Board defers consideration**

---

[35] The City cites to SMC 20.30.070 which states: "Legislative decisions include a hearing and recommendation by the Planning Commission and action by the City Council." (City of Shoreline's Reply to Petitioners' Response to City's Motion to Dismiss, at 11). The Board notes SMC 20.30.070 is not a "a public participation program identifying procedures providing for early and continuous public participation" and providing for "broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments" as specified in RCW 36.70A.140.

[36] Alternatively, WAC 197-11-405(4) may be disposed of as a new issue, as the City suggests. City Reply to Petitioners' Response to City's Motion to Dismiss, at 23-24. *See* RCW 36.70A.290(1), limiting the scope of the Board's decision to issues presented to the board in the statement of issues, as modified by any prehearing order.

[37] WAC 197-11-550 and -560 are contained in WAC 197-11 Part 5, and are incorporated by reference in the City's adopted SEPA procedures at SMC 20.30.620.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

of the City's compliance with public participation requirements. Although the record may be complete, the matter will be held for further analysis in the briefs and argument at the hearing on the merits.

Nevertheless, both parties have exhaustively briefed the narrower issue of adequacy of public notice. In the interests of judicial economy, the Board rules on the notice issues below and defers consideration of other allegations of public participation violations to the hearing on the merits.

PUBLIC NOTICE

Shoreline Preservation asks the Board to rule that the public notice provided by the City for the post-FEIS public hearing and for adoption of the ordinances did not meet GMA and SEPA requirements, as alleged in Legal Issues 2(a) and 16(a)(as amended).[38] The City's cross-motion requests a finding of full compliance with public notice requirements and dismissal of the legal issues alleging GMA and SEPA public participation violations. The Board upholds the City's notice procedures and denies Shoreline Preservation's motion.

The GMA requires notice procedures "reasonably calculated to provide notice to property owners and other affected and interested individuals." RCW 36.70A.035. Examples of reasonable notice provisions include publication in a newspaper of general circulation, publishing notice in city newsletters, and sending notice to city mailing lists. RCW 36.70A.140 requires "public hearings **after effective notice**." The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C .031(2) requires that "all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment." RCW

---

[38] Legal Issue 2. Lack of Public Participation.
(a) Does the adoption of Ordinances 702, 706 and 707 violate the requirements of RCW 36.70A.020(11), **.035**, .130(2) (a), .140; and goals and policies of the Shoreline GMA Comprehensive Plan, including but not limited to FG 11, LU 28, LU 29, and LU 30 because the City did not provide for early and continuous public participation?

Legal Issue16. Failure to Provide Adequate Opportunity for Public Review and Comment.
(a) Did the City's process for issuance of the Draft EIS and adoption of the Final EIS violate SEPA's requirements for public participation? ~~RCW 43.21C.550, .560~~; WAC 197-11-550; WAC 197-11-560; **WAC 197-11 Part Five**; ~~WAC 197-11-904(3)~~.WAC 197-11-405(4).

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

36.70A.130(2) (a)(v). SEPA requires "reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held." WAC 197-11-510.[39]

In its dispositive motion, Shoreline Preservation moves to dismiss the Planned Action Ordinance for failure of effective notice. The motion is grounded on the proposition that the Planned Action Ordinance effectively amends the development regulations in Ordinance 706 by "authorizing city administrators to make future non-legislative changes to the City's zoning, density and height and mitigation standards." Petitioners' Dispositive Motions at 15. On this theory, Ordinance 707 would need to be re-noticed as an amended regulation. The Board determined in the Public Action Ordinance section above, that Shoreline Preservation misreads Ordinance 707 on this point. Ordinance 707 in fact implements the development regulations in Ordinance 706 and does not amend them. Thus no separate notice was required.

However, Shoreline Preservation identifies other flaws in the City's notice procedures which, they argue, preclude dismissal of their public process challenges. Shoreline Preservation focuses on two notices, the November 26, 2014 notice for the planning commission's July 15, 2015 public hearing (Index No. 20.B.6) and the March 4, 2015 notice prior to final adoption by the City (Index No. 20.B.9). The November notice, published in the *Seattle Times*, announced a January 15, 2015 public hearing before the planning commission. This was apparently the only formal newspaper notice of issuance of the FEIS, the public hearing on the 185th Street Subarea Plan, and the proposed action. The March notice, sent out 12 days before the March 16, 2015 adoption of the three ordinances by the City Council, was a two-page letter to property owners in the subarea containing a map of the proposed rezone and a description of the three zoning classifications.

Shoreline Preservation raises numerous objections to the sufficiency of these notices, none of which appear to the Board be fatal, as we will explain. But in the first instance, it's essential to note these were not the only notices of the City's action on the

[39] In the SEPA Standing section above, the Board summarized the notice provided for the DEIS portion of the City's SEPA process on the 18th Street Station Subarea Plan.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Subarea Plan in the period between issuance of the FEIS in November, 2014 and adoption of the ordinances in March, 2015. Notice of the City's action was delivered via emails, *Alert Shoreline* notifications, *Currents* publications, press releases, website postings, and targeted postal mailings to households within the 185th Street Station Subarea notifying households of upcoming "Change to your Neighborhood." *See, e.g.* Index 1(Hh)(1); Index 20(B)(B4). The public notice provided by the City amply met the statutory requirements, in the Board's view.

Nevertheless, we address Shoreline Preservation's contentions that the November published notice and March mailed notice were not effective.

Pre-Holiday Timing. Shoreline Preservation complains the *Seattle Times* notice for the planning commission public hearing was published the day before Thanksgiving for a hearing to be held two months later, on January 15, 2015, thus was not "reasonably calculated to provide notice" to busy citizens. Petitioners' Response, at 4.[40] However, citizens were in no way prejudiced by the timing of the November notice, as the record documents that the City provided ample additional notice prior to the January 15 hearing. Each of the individual petitioners and Ms. Way on behalf of Shoreline Preservation Society provided written comment on the FEIS, testified at the public hearing, and continued to provide input until the Council vote was taken.

Notice Not Sufficiently Specific. Shoreline Preservation cites Board decisions remanding ordinances where action had been taken without notice properly apprising citizens of the matter being considered. In *Orton Farms v. Pierce County*, GMHB Case No. 04-3-0007c, Final Decision and Order (August 2, 2004), at 14-15, the County's published and mailed notices listed "T-8 Agriculture" as one of the comprehensive plan amendments under consideration. The Board ruled the notice "was not reasonably calculated to provide

[40] The Board is reminded of *North Everett Neighborhood Association v. City of Everett*, GMHB Case No. 08-3-0005, Corrected Final Decision and Order (May 18, 2009), at 18, where neighbors objected that notice of comprehensive plan changes was published July 1 for a planning commission meeting July 7: "The Board sympathizes with the neighborhood participants – busy with their day jobs and their Fourth of July activities – yet having to scramble to respond to Providence's proposal on a very tight turn-around. However, the City's proceedings were open, and petitioners continued to provide input through August 20, 2008, when the Council vote was taken."

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

notice" of the nature of the proposed amendment. In *Petrie II v. City of Edmonds*, GMHB Case No.09-3-0005, Final Decision and Order (August 17, 2009), at 15, the Board found the city's notices that simply announced "Parks Plan update" failed to "alert the public to the key questions in play."

By contrast, the November 26, 2014 published notice in the present case specifically advises the public that a subarea plan is being considered for the 185th Street Station area, providing three new zoning districts for mixed-use transit-oriented development. In addition, the City will adopt new plan goals and policies, a zoning map, design standards, permit procedures, signage, parking and uses for the station area.[41] This notice is sufficiently detailed to alert the public to the types of changes being considered.

Notice Lacks Locational Detail. "Effective notice" of an ordinance affecting property must indicate location, Shoreline Preservation contends, citing parallel notice requirements of the Optional Municipal Code, RCW 35A.63.152: "including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means."[42] Thus, they argue, the November published notice was not "reasonably calculated to provide notice" to interested citizens.

Petitioners cite *Neighbors for Responsible Development v. Yakima,* GMHB Case No. 02-1-0009, Final Decision and Order (December 4, 2002). But the Yakima case does not stand for the proposition that specific locational detail is required in the newspaper notice of a plan amendment. In the Yakima case, the County's sole notice of a legislative rezone was distributed only to adjacent properties, included a map of the existing location with no indication of the proposed change, and no other public outreach or information was

[41] The notice states, in part: "The City proposes to adopt a Subarea Plan establishing goals and policies for development within areas of the City surrounding the future Sound Transit light rail station at 185th Street. The Subarea Plan creates goals and policies for development around the future light rail station. The Comprehensive Land Use Map will be amended by creating new land use designations. The City's Zoning Map will be amended to add three zoning districts to accommodate mixed use Transit-Oriented Communities. The Development Code will also be amended to implement regulations for the new zones that include definitions, new permit types and procedures, dimensional standards, design standards, parking, signage, and uses. The 185th Street Light Rail Station Subarea Plan is considered a "Planned Action" consistent with RCW 43.21C.031 and WAC 197-11-164 to .172."

[42] The Board has previously ruled it will not address the Optional Municipal Code arguments.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

provided. "At no point in the process was the public provided a map reflecting the location and type of land use change proposed," according to the Board. Here, by contrast, we have a veritable barrage of documentation of the City of Shoreline's public outreach for the 185th Street Subarea Plan, including published and distributed maps. Lack of a map or specific boundary description in the November published notice is not a flaw violating GMA or SEPA notice requirements.

Draft Ordinances Not Available. Shoreline Preservation asserts notice of the single public hearing was issued before the proposal was even in ordinance format. The GMA's public participation requirements, however, are not violated simply because the City has not yet formalized its proposal into an ordinance. *See*, *Burrow v. Kitsap County,* GMHB Case No. 99-3-0018, Final Decision and Order (March 29, 2000) (no GMA requirement that the local jurisdiction must have prepared a document for public inspection specifically proposing all elements of the amendment ultimately adopted). In fact, the City's record here indicates the initial proposed text and map of the subarea plan amendments were both posted on the City's website as early as November 27, 2014, when a single ordinance, Ordinance No. 702, was being proposed for all of the actions, including the Planned Action Ordinance. Index No. 26.

Ordinances Not Noticed by Number. Shoreline Preservation asserts: "No official notices specifically referenced Ordinance Nos. 702, 706, and 707." Dispositive Motion at 17. Shoreline Preservation alleges this violates the Optional Municipal Code, RCW 35A.63.100 and 35A.63.070.

The City's record indicates that the text of the 185th Street subarea plan, regulations, and planned action was drafted initially as a single ordinance – Ordinance No. 702, with the Planned Action as an attachment. Index 1 (Ss, Attachment A). This was the text reviewed, with Shoreline Preservation in attendance, at the December 4, 2014, and January 15, 2015, planning commission meetings. Index 26, Index 1(Ss), Index 1(Uu)(1)(A). However, prior to presenting the Planning Commission report to the City Council on February 7, 2015, City staff divided the proposal into the three ordinances subsequently adopted. Index No.1 (Xx)(1), Staff Report.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Petitioners' theory is that failure to re-notice the action and call out the Planned Action Ordinance by ordinance number constitutes ineffective notice under RCW 36.70A.035 as read under the gloss of the Optional Municipal Code. However, the Board lacks jurisdiction over the Planned Action Ordinance and is not authorized to determine compliance with the Optional Municipal Code. Shoreline Preservation has demonstrated no violation of GMA or SEPA notice requirements.

Substantial Changes During Council Review. Shoreline Preservation asserts the City failed to hold more public hearings after substantial changes were made to the original zoning proposals during the post-FEIS period, in violation of RCW 36.70A.035(2). RCW 36.70A.035(2)(a) provides that a city or county council must provide an additional opportunity for public review and comment if it chooses to consider a change to an amendment to its comprehensive plan or development regulations after the opportunity for review and comment has passed. However, an additional public hearing is not required if "the proposed change is within the scope of the alternatives available for public comment." RCW 36.70A.035(2)(b)(ii). Petitioners complain: "Up until adoption in March, 2015, the City Council considered a multitude of changes at each new meeting." Petitioners' Response, at 3. However, they have identified no changes that were not within the scope of the alternatives available for comment.[43]

In *Preserve Responsible Shoreline Management (PRSM)*, GMHB Case No. 14-3-0012, Final Decision and Order (April 6, 2015), at 28, the petitioners contended drafts of the ordinance were not uniformly available before meetings, and last-minute changes hampered public review. The Board noted: "Similar complaints were raised in *Hagwell v. City of Poulsbo*, GMHB Case No. 12-3-0006, Final Decision and Order (March 11, 2013) at 10-11, where petitioners claimed the city repeatedly modified documents during the adoption process without timely notice and that maps were unreadable on the website." The

[43] In the Planned Action Ordinance section above, the Board dismissed Shoreline Preservation's argument that the Planned Action Ordinance provided administrative discretion for action not within the scope of publicly available alternatives.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Board in both cases concluded a vigorous city council process did not equate to violation of public notice and participation requirements.

In the present case, Shoreline Preservation has documented no specific changes that were outside the scope of the proposal or enacted after public comment closed so as to necessitate additional notice. Their complaint has been that the plan adoption was a moving target, with changes too frequent for citizens to keep up and provide effective comment. The Board's decisions establish that so long as public comment is allowed until the council's final action, amendments within the scope of the noticed action are allowed without requiring a new notice and hearing.[44]

In sum, **the Board finds** the City provided notice of adoption of the 185th Street Station Subarea ordinances that was well-calculated to inform property owners, interested individuals and organizations, and the general public. While the Shoreline Preservation cross-motion on notice was more narrowly focused, they had full opportunity in their responsive briefing to contest the City's motion for a dispositive ruling of compliance with notice requirements. **The Board concludes** the City complied with RCW 36.70A.035 and WAC 197-11-510. The City's motion to dismiss challenges to public participation compliance **is granted as to notice procedures.** Those portions of Legal Issues 2(a) and 16(a) are **dismissed**. The Board's consideration of remaining issues of alleged public participation failures, if any, is deferred for briefing and oral argument at the hearing on the merits.

SUPPLEMENTATION OF THE RECORD

Shoreline Preservation moves to supplement the record with three documents:

[44] *See, e.g.*, *Petso II v. City of Edmonds*, GMHB Case No. 09-3-0005, Final Decision and Order (August 17, 2009), at 19: "The Edmonds City Council did not take action on the Parks Plan update until December 16, 2008. The Edmonds City Council allows citizen input in all its public meetings, whether or not a matter is on its agenda. Thus interested citizens had a continuing opportunity to comment on the July 20 and November 25 amendments." (internal citations omitted); *Halmo v. Pierce County,* GMHB Case No. 07-3-0004c, Final Decision and Order (September 28, 2007), at 26: After a 4-year planning process, County staff introduced an overlay provision to authorize a solid waste facility. The Board rejected a "late amendment" objection: "Pierce County's proceedings were open, petitioners participated actively at all stages of the process, and comment was accepted up until the final vote of the County Council. No violation of .035 or .140 is apparent on the face of the matter."

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

1. The Final Environmental Impact Statement for the City of Shoreline Comprehensive Plan dated November 2, 1998 (proposed Index No. 23);

2. The Thornton Creek Watershed Plan, dated November 2009 (proposed Index No. 24); and

3. June 15, 2015, Thornton Creek LID Project and Basin Plan Update (proposed Index No. 25).

The Board grants admission of a portion of the 1998 FEIS as Index No. 23 and the Thornton Creek Watershed Plan as Index No. 24. Shoreline Preservation has withdrawn its request for the June 2015 staff and consultant report. Petitioners' Reply re Motion to Supplement, p. 12.

1. *FEIS for the City of Shoreline 1998 Comprehensive Plan – Admitted in part as Index 23 (pages FEIS 2-17 to 2-19 and 2-49)*.

The City contends the FEIS for the 1998 Comprehensive Plan is outdated and unnecessary. Shoreline Preservation argues the Plan has been updated twice since 1998 - in 2005 and again in 2012 – on the basis of Declarations of Non-Significance incorporating the 1998 FEIS.[45]

The Board notes Shoreline Preservation has called out only the 1998 FEIS analysis of surface water drainage impacts and mitigation measures, arguing the stormwater management deficiencies still exist and mitigation measures have not been implemented and evaluated. Shoreline Preservation asserts this information may be "necessary or of substantial assistance" to the Board's decision.[46] The Board accordingly allows

[45] According to Petitioners, "The City has yet to update the 1998 FEIS with a new FEIS for its comprehensive plan, instead adopting a series of Determinations of Nonsignificance (DNS's) utilizing that FEIS as the basis for the DNS' in subsequent updates in 2005 (comprehensive plan update) and 2011 (2011 Transportation Master Plan). Supplemental EIS' were adopted for specific districts in 2001 (North City Business District) and 2011 (Shoreline Town Center SEIS). These SEIS' also utilized the 1998 FEIS as the basis for supplementing. *See Adoption of Notice* (Sept. 27, 2012), attached to Petitioners" Motion to Supplement the Record." Petitioners' Reply re Motion to Supplement, p. 4, n. 4.

[46] RCW 36.70A.290(4): "The board shall base its decision on the record developed by the city . . . and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision." WAC 242-03-565(1): "A motion to supplement . . . shall state the reasons why such evidence would be necessary or of substantial assistance to the board in reaching its decision."

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

supplementation of the record with the Surface Water Drainage sections of the 1998 Comprehensive Plan FEIS, pages 2-17 to 2-19 and 2-49.

2. Thornton Creek Watershed Plan (2009) – Admitted as Index 24.

The majority of the 185th Street Station Subarea is located in the Thornton Creek Watershed. *See Figure 2-3 Basin Map, Compare* Surface Water Master Plan at 31(Index No. 22) with the Subarea Rezone Map Index No. 18 (Ordinance 706 at last page, attached to PFR). Shoreline Preservation asserts the Thornton Creek Watershed Plan should be included in the record because it provides the justification for and the detailed list of capital improvements necessary for the watershed, along with priorities. Motion to Supplement, p.3. The City counters that the subarea plan EIS analysis relied on the City's 2005 Surface Water Master Plan, the 2011 Surface Water Master Plan, the 2014 Stormwater Management Program, and other planning documents from the City's Surface Water Utility and Environmental Services Division. DEIS ch. 4 at 4-2; FEIS ch. 5, pp. 5-2 – 5-3. The 2009 Thornton Creek Watershed Plan is not necessary for the Board's review, according to the City. City Response to Motion to Supplement, at 7-8.

The Board notes the FEIS identifies stormwater management as a significant issue under any of the analyzed alternatives for the subarea. Many pages of mitigation measures are provided.[47] The FEIS references and relies on the Thornton Creek Watershed Plan in its analysis of capital projects necessary for surface water management in the subarea plan.[48] While it seems likely the recommendations of the watershed plan are incorporated in the subsequent 2011 Surface Water Master Plan, which has been added to the record as Index 22, the Board grants the motion and supplements the record with the Thornton Creek Watershed Plan, admitted as Index 24.

3. June 15, 2015, Thornton Creek LID Project and Basin Plan Update – Withdrawn.

[47] FEIS, ch. 3, pp. 3-214 to 3-219, 3-236 to 3-238, and 3-250 to 3-253.

[48] *See, e.g.,* "This problem [flooding due to undersized Serpentine Pump Station] was studied under the Thornton Creek Watershed Plan." FEIS, p. 3-237, ¶ 3; "A preliminary solution [to the 10th Avenue flooding] was identified in the Thornton Creek Watershed Plan." FEIS, p. 3-238, ¶ 4.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

ORDER

1. **The Board lacks jurisdiction to review Ordinance 707, the Planned Action Ordinance.**
    - The City's motion to dismiss all issues challenging Ordinance 707 is granted.
    - Shoreline Preservation's motion for a ruling that the Board has jurisdiction to review the Planned Action Ordinance is denied.
    - Legal Issues 7, 8, and 12 are dismissed, and all references to Ordinance 707 in the remaining legal issues are stricken.
2. **Shoreline Preservation exhausted administrative remedies and has standing to challenge SEPA compliance.**
    - The City's motion to dismiss SEPA issues is denied.
    - Legal Issue 16(a) allegations of violations of WAC 197-11-405(4) are dismissed.
3. **The City's notice procedures complied with GMA and SEPA.**
    - Shoreline Preservation's motion for a ruling that the City failed to provide effective notice of Ordinance 707 is denied.
    - The City's motion for a dispositive ruling of compliance with GMA and SEPA notice and public participation requirements is granted as to notice. The Board defers consideration of other public participation issues, if any, for briefing and hearing on the merits.
    - Legal Issue 2(a) reference to RCW 36.70A.035 is stricken, and Legal Issue 16(a) inclusion of WAC 197-11-510 in WAC 197-11 Part Five is stricken.
4. The 1998 Comprehensive Plan Final Environmental Impact Statement, Surface Water Drainage section only, is admitted as Index No. 23. The Thornton Creek Watershed Plan is admitted as Index 24.

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

ENTERED this 10th day of September, 2015.

Margaret Pageler, Presiding Officer

Cheryl Pflug, Board Member

Charles Mosher, Board Member

Growth Management Hearings Board
1111 Israel Road SW, Suite 301
P.O. Box 40953
Olympia, WA 98504-0953
Phone: 360-664-9170
Fax: 360-586-2253

Attachment A

Statement of Legal Issues – Case No. 15-3-0002

Note: The Legal Issues set forth in the prehearing order are marked up to reflect corrections and dismissals in the September 10, 2015, Order on Motions. Any additional legal issue or portion thereof which is based on the contention that Ordinance 707 is an amended development regulation is also dismissed.

A. VIOLATIONS OF THE GROWTH MANAGEMENT ACT

1. Lack of Coordinated Planning. Does the adoption of Ordinances 702, 706, ~~and 707~~ violate the GMA requirements for coordinated comprehensive planning between local governments, as well as service providers, under RCW 36.70A.020(11), .070 (preamble), .100, .210(1); the Countywide Planning Policies (CWPPs), including but not limited to PF-2; and the City of Shoreline Comprehensive Plan, including but not limited to Policies LU 28, LU 29, LU 30, CF 25, CF 26, CF 28, and CF 30?

2. Lack of Public Participation.

(a) Does the adoption of Ordinances 702, 706 ~~and 707~~ violate the requirements of RCW 36.70A.020(11), ~~.035,~~ .130(2) (a), .140; and goals and policies of the Shoreline GMA Comprehensive Plan, including but not limited to FG 11, LU 28, LU 29, and LU 30 because the City did not provide for early and continuous public participation?

(b) Does adoption of the Ordinances also violate the requirements of RCW 36.70A.020(11), .035, .070(3), .120, .130(2) (a), .140; and goals and policies of the Shoreline GMA Comprehensive Plan Policies, including but not limited to FG 11, LU 28, LU 29, and LU 30 by authorizing automatic zoning map amendments in the future, without additional public input or rights of appeal as to whether the City has actually completed future capital facilities planning necessary to support the subsequent automatic zoning or identified funding to support it?

3. Subarea Plan Violates GMA. Does the adoption of Ordinances 702, 706, ~~and 707~~ violate the requirements of RCW 36.70A.020(10) and .130(2)(a)(i) because the subarea plan: (i) does not implement jurisdiction-wide comprehensive plan policies; and (ii) does not address the cumulative impacts of the proposed plan by appropriate environmental review under RCW Chapter 43.21C?

4. Lack of Adequate Capital and Public Facilities. Does the adoption of Ordinances 702, 706 ~~and 707~~ violate the requirements of RCW 36.70A.020(12), .070(3), and .070(6); and Shoreline GMA Comprehensive Plan Policy FG 2, because the plan does not ensure that those public facilities necessary to support development will be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards?

5. Lack of Consistency and Capital Facilities Planning. Does the adoption of Ordinances 702, 706, ~~and 707~~ violate RCW 36.70A.020(12), .040(3) and .120, which require that:
(a) implementing development regulations be consistent with comprehensive plan policies; (b) infrastructure be in place at the time of development; and (c) planning decisions be consistent with budget decisions and adopted capital facility plans, because the amendments allow development that is inconsistent with adopted utility and capital facilities plans?

6. Lack of Consistency. Does the adoption of Ordinances 702, 706, ~~and 707~~ violate the consistency requirements of RCW 36.70A.070 (preamble), .040(3), .070(3), .070(6), and .120 because the subarea plan and development regulations are not consistent with the Shoreline GMA Comprehensive Plan, including but not limited to the following goals, policies, and other parts of the comprehensive plan: Goals FG 2, FG 7, FG 8, FG 9, FG 10, FG 11, and FG 17; Goal CP 1; Policies CP 1, CP 2, CP 3, CP 4, and CP 8; Goals LU IV, and LU V; Policies LU 5, LU 6, LU 12, LU 28, LU 29, LU 31, LU 32, LU 50, LU 68, LU 70, and LU 71; Goal UI; Policies U 1, U 4, and U 5; Goals CF I, CF II, CF III, CF IV, and CF VI, Policies CF 3, CF 4, CF 5, CF 7, CF 23, CF 25, CF 26, CF 27, CF 28, CF 29, CF 30, CF 31, and CF 32, Goals NE VI and NE X; Policies NE 1,

NE 2, NE 6, NE 7, NE 11, NE 12, NE 19, NE 21, NE 24, NE 25, NE 29, NE 32, NE 33, NE 40, NE 42, and NE 44; as well as the 2011 *Shoreline Surface Water Master Plan Update*, and the 2009 *Shoreline Thornton Creek Watershed Basin Plan*?

~~7. Board has Jurisdiction over Development Regulations. Did Ordinance 707, the Planned Action Ordinance, amend City development regulations by adopting different standards for development than the standards adopted in Ordinance 706, thereby authorizing Board review under RCW 36.70A.280(1) (because Ordinance 707 amends development regulations)?~~

~~8. Planned Action Ordinance Violates GMA and SEPA. Does the adoption of Ordinance 707 violate RCW 36.70A.020(6), .020(7), and .020(10), RCW 36.70A.040, and the planned action statutes and regulations, including but not limited to RCW 43.21C.440 and WAC 197-11-164, 197-11-168, and 197-11-172?~~

9. Development Regulations ~~and Planned Action Ordinance~~ Violate GMA. Does the adoption of Ordinance~~s~~ 706 ~~and 707~~ violate RCW 36.70A.020(6) and .020(7) and RCW 36.70A.370 and Shoreline Comprehensive Plan Goal FG11 because the development standards are not clearly identified in the regulations, thus creating uncertainty and unfairness in the permitting process for potential developers, landowners and the public; and authorizing an arbitrary and discriminatory process for approving permits?

B. VIOLATIONS OF THE STATE ENVIRONMENTAL POLICY ACT

10. Illegal Segmentation/Piecemealing of Proposal. Does the adoption of Ordinances 702, 706, ~~and 707~~ violate the requirements of GMA and the procedural and substantive requirements of SEPA, because the FEIS accompanying and incorporated by reference in those ordinances violated RCW 43.21C.030, WAC 197-11-055(5), -060(3)(b) and -060(4), because the FEIS failed to consider impacts identified in the 145th Street Station planning and environmental review and the Sound Transit planning and environmental review on the Lynnwood Link Extension, and failed to consider impacts identified in prior environmental documents supporting the Shoreline Comprehensive Plan and other subarea plans?

11. Adopted Alternative Outside the Range of Alternatives. Does the adoption of Ordinances 702, 706, ~~and 707~~ and the FEIS accompanying and incorporated by reference in those ordinances violate the requirements of GMA, including but not limited to RCW 36.70A.020(11), ~~.035~~, .130(2)(a), .140 and Shoreline Comprehensive Plan Goal FG 11 and Policies LU 28, 29, and 30; and the procedural and substantive requirements of SEPA, including but not limited to WAC 197-11-440(5), -402, and -655 because the alternative adopted was outside of the range of alternatives identified in the DEIS and/or the FEIS; and the City failed to analyze the unique probable significant adverse environmental impacts of this alternative as additional "mitigation," as required by WAC 197-11-660(2)?

~~12. FEIS does not Support Planned Action Ordinance. Does the adoption of Ordinances 702, 706, and 707 violate the requirements of GMA and the procedural and substantive requirements of SEPA, because the FEIS incorporated by reference in Ordinance 707 fails to meet, among others, the requirements of RCW 43.21C.440, WAC 197-11-164, 197-11-168, and 197-11-172?~~

13. Failure to Analyze Cumulative Impacts. Does the adoption of Ordinances 702, 706, ~~and 707~~ violate the requirements of GMA and the procedural and substantive requirements of SEPA, because the FEIS accompanying and incorporated by reference in those ordinances violated, among others, the requirement of WAC 197-11-060(4) to evaluate cumulative impacts of the proposal?

14. FEIS Inadequacy. The violations of GMA and SEPA cited elsewhere in this Petition are hereby incorporated by reference in their entirety, as independent bases for finding the EIS inadequate. In addition, does the adoption of the FEIS violate SEPA, RCW 43.21C.031, .060., WAC 197-11-060(4), 330(3) – (5), Part 4, 660, -906(2)(g), because:

(a) the FEIS did not adequately identify all probable significant adverse environmental impacts of the Ordinances, including but not limited to impacts to critical areas, floodplains, tree canopy, City services, schools, emergency, police and fire services, water and sewer service providers, transportation, clean air, clean water, City budgets and funding sources already allocated for use by other City programs;

(b) did not identify all the mitigation necessary to reduce the impacts of the Ordinances to a level that was less than significant, with appropriate citation to adopted SEPA policies;

(c) did not demonstrate how proposed mitigation measures were reasonable or capable of being accomplished, e.g., did not identify the funding sources available and adequate to ensure the mitigation would take place at the times required by GMA, and did not identify the regulatory mechanisms by which all identified mitigation would be required at the required time;

(d) did not identify which impacts could not be avoided or would not be mitigated;

(e) did not disclose or discuss all significant alternatives; and

(f) contained factual errors or statements of fact unsupported by any underlying analysis, study or report?

15. Use of Prior Environmental Documents. To the extent the City relied upon prior existing environmental documents, did adoption of the FEIS violate the specific parameters for use of these documents under RCW 43.21C.034; WAC 197-11-600?

16. Failure to Provide Adequate Opportunity for Public Review and Comment.

(a) Did the City's process for issuance of the Draft EIS and adoption of the Final EIS violate SEPA's requirements for public participation? ~~RCW 43.21C.550, .560~~; WAC 197-11-550; WAC 197-11-560; WAC 197-11 Part Five; ~~WAC 197-11-904(3).~~WAC 197-11-405(4).

(b) Did the City's adoption of the Ordinances also violate these public participation requirements by approving automatic zoning map amendments in the future, without additional public input or rights of appeal as to whether the City: (a) will have actually completed the promised, future capital facilities planning necessary to support the subsequent automatic zoning; and/or (b) has appropriate mitigation measures in place for this future zoning, as specified in the FEIS and required by SEPA, RCW 43.21C.031, .060?

17. Failure to Condition the Proposal Based on Adopted SEPA Policies.

Did the City violate RCW 43.21C.060 and WAC 197-11-660, -902, -906(2)(g), by purporting to condition the proposal (adoption of the Ordinances) with mitigation measures from plans, reports or ordinances that have not been adopted by the City as policies available for the exercise of substantive authority; are not enforceable under the City's SEPA authority; and therefore are not enforceable mitigation measures that are reasonable and capable of being accomplished?